



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LVO/151668

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2013, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Wisconsin Works (W-2) in regard to child care benefits, a hearing was held on November 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Children and Families (the agency) correctly issued a Levy upon the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: MacArthur Strawder, Quality Assurance Training Manager
Maximus / Wisconsin Works (W-2)

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The primary person or case head, for the child care case involved here, is SB, the mother of Petitioner's children. (Exhibit 2, Testimony of Mr. Strawder)
3. On December 14, 2012, the agency sent SB Wisconsin Works Overpayment Notifications for claim numbers [REDACTED], [REDACTED], and [REDACTED] (Exhibit 2, pgs. 22-29)

4. The agency did not send/mail any Wisconsin Works Overpayment Notifications that were specifically addressed to Petitioner due to a glitch in the computer system. Consequently, duplicates of notices sent to SB were mailed to the address on file for SB, [REDACTED], because the agency believed Petitioner and SB were living together. (Testimony of Strawder)
5. On January 3, 2013, the agency sent Petitioner a repayment agreement at [REDACTED]. (Exhibit 2, pg. 34-35)
6. On February 4, 2013, March 4, 2013 and April 2, 2013, the agency sent three dunning notices/reminders of the W-2 overpayment to Petitioner at [REDACTED]. (Exhibit 2, pgs. 15-17)
7. On June 23, 2013, the agent sent Petitioner a notice indicating that it was issuing a levy upon his property. The notice was sent to the Petitioner at [REDACTED] in Milwaukee. (Exhibit 4)
8. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 27, 2013. (Exhibit 1)

DISCUSSION

IS THE APPEAL TIMELY?

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal by a third party to a levy action, must be filed within 20 days of the service of the levy. *Wis. Admin. Code §DCF 201.04(5)(ep) 3. c. and 4. a.* In the case at hand, the service of the levy occurred on June 23, 2013. Petitioner filed his appeal on August 27, 2013, well after the 20 day appeal period lapsed. However, Petitioner asserts that the service of the notice was defective and that he did not timely receive the notice of levy.

Petitioner testified that he did not live at the [REDACTED] address to which the agency sent the notice of levy. Petitioner testified that he was living at [REDACTED]. Petitioner further testified that he was unaware of any W-2 overpayment or levy, until his wages started being garnished from his paycheck and he was called into “the office” at work, sometime at the end of the summer of 2013. Petitioner testified that SB did not inform him about any of this until after his wages started to be garnished.

Where the evidence presented by the agency demonstrates that a notice was correctly mailed, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received. *See State ex. Rel. Flores v. State*, 183 Wis.2d 587, at 612-613 (1994).

In the case at hand, the agency sent the June 23, 2013 notice of Levy to Petitioner at [REDACTED] because that is the address the agency had on file for SB and because the agency believed Petitioner and SB were living together. (Testimony of Mr. Strawder) The agency provided no documentation showing Petitioner’s address to be [REDACTED] as of June 23, 2013. It should be noted that the case comments from the agency show that SB called on March 11, 2013 to report that Petitioner had moved out of her residence. (Exhibit 2, pg. 10) As such, the agency has not shown that the notice of levy was correctly mailed to Petitioner on June 23, 2013. Because of this, Petitioner’s appeal is considered timely filed.

DID THE AGENCY CORRECTLY INSTITUTE THE LEVY?

Wis. Stats. §49.195(3) states that agencies must determine when an overpayment in child care benefits has occurred and that it must, “promptly recover all overpayments”.

Wis. Stats. §49.195(3n)(b) states:

If any debtor neglects or refuses to pay a debt after the department has made demand for payment, the department may collect that debt and the expenses of the levy by levy upon any property belonging to the debtor. Whenever the value of any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any additional property of the person until the debt and expenses of the levy are fully paid.

Wis. Admin. Code §DCF 201.04(5)(ep) 2. a. further discusses the notice required prior to levy:

(ep) *Levy under section 49.195 (3n), Stats*

...

2. 'Notice prior to levy.'

- a.** If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. [DCF 201.07](#) are pending and the time for requesting a review has expired, the department shall give notice to the debtor that the department may pursue legal action for collection of the debt.
- b.** The department shall make the demand for payment and give notice to the debtor at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt...
- c.** The debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy.
- d.** Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

3. 'Service of levy and review when property levied.'

- a.** The department may collect the debt and the expenses of the levy by levy upon any personal property belonging to the debtor.
- b.** The department shall serve the levy upon the debtor and any 3rd party in possession of or obligated with respect to property or rights to property that is subject to levy by personal service or by any type of mail service that requires a signature of acceptance as provided in s. [49.195 \(3n\) \(m\)](#), Stats. The debtor or 3rd party's failure to accept or receive service of the levy does not invalidate the levy.

The Wisconsin Shares Child Care Manual §2.3.4 also states the following:

Recover client overpayments by using a repayment agreement. Negotiate the monthly amount of the repayment with the client.

Negotiate this amount so that the claim will be repaid in equal installments within three (3) years or less. The monthly amount of the repayment agreement for persons in W-2 Trial Jobs may not exceed the monthly subsidy paid to the employer.

All clients for whom an overpayment has been calculated are required to complete and sign a repayment agreement.

Once the repayment agreement has been completed, put the data on BVPA in CARES. CARES will send the client a benefit recovery notice.

In the event of unsuccessful collection efforts and after the 3rd dunning notice, the Department will begin centralized collection efforts. Tax intercept and wage garnishment may be used to obtain repayment of delinquent claims. Repayments for delinquent claims may also be collected through the use of the Department of Revenue (DOR) Tax Offset program.

Emphasis added

Petitioner testified that he did not get the not get the January 2013 re-payment agreement, nor the following three dunning notices from February through April 2013, all of which the agency sent to SB's address, [REDACTED], based upon its belief that Petitioner and SB were living together. Petitioner denied living at [REDACTED] during the time in question.

Petitioner testified that SB lived at [REDACTED]. As discussed above, SB reported that Petitioner moved out of her home as of March 11, 2013; so at the very least, the April 2013 dunning notice was not mailed to the correct address. It should also be noted that the agency did not provide adequate notice to Petitioner of the overpayment, itself, because the agency never sent any Wisconsin Works Overpayment Notifications that were specifically addressed to Petitioner. Notice to SB is not the same as notice to Petitioner. Consequently, it is found that the agency did not correctly issue a levy upon Petitioner.

Petitioner should note that the agency can still pursue the overpayment if it first gives Petitioner proper notice of the overpayment itself and if the agency correctly follows the notice requirements for further collection actions such as a levy.

CONCLUSIONS OF LAW

The agency did not correctly institute a levy upon Petitioner.

THEREFORE, it is

ORDERED

That the agency rescind the levy issued on June 23, 2013 and cease any collection efforts under that levy. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

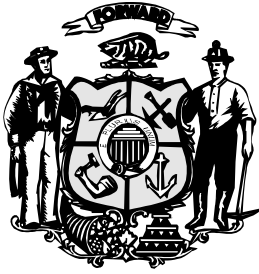
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of December, 2013

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 6, 2013.

Wisconsin Works (W-2)
Public Assistance Collection Unit